

OPINION
55-70

September 16, 1955 (OPINION)

ISLANDS

RE: As State Game Refuges

Your request for an official opinion as to the status of islands in the Missouri River as state game refuges, is hereby acknowledged.

The reservation of all islands in Devils Lake and in the Missouri River as state game refuges was first made by the legislature by the adoption of the present section 20-1105 N.D.R.C. in the year 1911. The ownership in the state of islands formed in a navigable river is a right of sovereignty and section 47-0608 N.D.R.C., adopted first in 1895, claimed such ownership where there is no title or prescription to the contrary. The legislature therefore had the authority to establish all islands then owned or which were formed subsequent to 1911 as game refuges.

It is the opinion of this office that the status of an island as a state game refuge was determined by the legislature and is not dependent upon any marking or posting by the Game and Fish Commissioner.

It is further the opinion of this office that the sale of an island by the state to a private individual after 1911, would not extinguish the state game refuge which had been established by the legislature. The game refuges which are established by the commissioner on public lands are, however, extinguished upon the sale of such lands.

A change in the channel of the Missouri River through natural causes or through dam construction does not operate to change the status of such river as a navigable river, therefore the same rules would apply to islands formed within a broadened part of the river such as the Garrison Reservoir.

LESLIE R. BURGUM

Attorney General